

SENATE BILL 1330

By Henry

AN ACT to amend Tennessee Code Annotated, Title 9 and Title 47 relative to the perfection, priority and enforcement of pledges and liens.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, is amended by adding the following as a new Chapter 22 thereof:

**CHAPTER 22 – PERFECTION, PRIORITY AND ENFORCEMENT OF PUBLIC PLEDGES AND LIENS**

**9-22-101. Short Title.**

This Chapter may be cited as the “Perfection, Priority And Enforcement of Public Pledges And Liens Act.”

**9-22-102. Intent.**

It is the intent and purpose of this chapter to provide a uniform and comprehensive statutory framework governing the perfection, priority and enforcement of pledges and liens created by certain state and local governmental entities, agencies and instrumentalities in connection with their issuance of debt

obligations, and to thereby exempt the perfection, priority and enforcement of such pledges and liens from the provisions of Tennessee Code Annotated Title 47, Chapter 9. If any statute of this state, other than Title 47, Chapter 9, imposes or authorizes a security interest relating to any public obligations, that statute and any indenture, resolution or other instrument entered into or adopted pursuant thereto, and not Title 47, Chapter 9, shall in all respects govern the creation,, priority and enforcement, and compliance with that statute shall result in the perfection, of such security interest.

**9-22-103. Definitions.**

In this chapter:

(a) "Collateral" means any revenues, operating income, fees, rents, tolls, or other charges received or receivable by an issuer from any public works project or otherwise, rights to payment and other rights under agreements, rights to and receipts of tax collections and revenues, rights to and receipts of grants or contributions, in the case of utility districts and emergency communication districts, all property, real and personal, comprising the systems owned and operated by such districts, any funds, monies or accounts, or any other personal property which an issuer is authorized to pledge to the payment of a public obligation.

(b) "Issuer" means the state of Tennessee, authorities and agencies of the state of Tennessee and all political subdivisions and public instrumentalities of the state of Tennessee, including, without limitation, cities, towns, metropolitan governments, counties, authorities, districts, and corporations or other public

entities. Notwithstanding the foregoing, for purposes of this chapter, the term “issuer” shall not include public corporations incorporated under Tennessee Code Annotated Title 7, Chapter 53; or Title 48, Chapter 101, Part 3;

(c) "Official actions" means the actions by statute, order, ordinance, charter, resolution, contract, or other authorized means by which an issuer provides for issuance of a public obligation;

(d) "Public obligation" means an agreement of an issuer to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money, a lease, an installment purchase agreement, or otherwise, and includes a share, participation, or other interest in any such agreement.

#### **9-22-104. Perfection of Pledges or Liens.**

The grant of a pledge or the creation of a lien on collateral by an issuer, which grant or creation is otherwise authorized under the provisions of Tennessee law, shall be valid and binding from the time that the pledge or lien is created or granted and shall inure to the benefit of the holder or holders of the public obligations with respect to which such pledge or lien was created or granted until the payment in full of the principal thereof and premium and interest thereon, and neither the official action nor any other instrument granting, creating, or giving notice of the pledge or lien need be filed or recorded to preserve or protect the validity or priority of such pledge or lien.

#### **9-22-105. Priority of Pledges or Liens.**

(a) All bonds and notes, and other public obligations evidenced by multiple certificates or instruments, of the same issue shall be equally and ratably

secured, without priority by reason of number, date, date of sale, date of execution or date of delivery, by any pledge or lien created or granted on collateral to secure the payment thereof.

(b) Any creation or grant of a pledge or lien on collateral by an issuer shall be junior in priority to competing pledges, liens and other security interests granted or created prior to the date such pledge or lien is created; provided that an official action may provide for the issuance of public obligations on a parity with the public obligations authorized thereby.

**9-22-106. Enforcement of Pledges or Liens.**

The manner in which the holder or holders of public obligations may enforce the pledge or lien created by an issuer with respect thereto shall be governed by the provisions of Tennessee law authorizing the creation of such pledge or lien, and, subject to such provisions of Tennessee law, the terms of the official action authorizing such public obligations.

**9-22-107. Impairment of Contract.**

Except as set forth in Section 9-22-109, nothing in this chapter shall be deemed in any way to alter the terms of any agreements made with the holders of any public obligations of an issuer or to authorize an issuer to alter the terms of any such public obligations, or to impair, or to authorize any issuer to impair, the rights and remedies of any creditors of any issuer.

**9-22-108. Supplementary Nature.**

The provisions of this chapter shall be in addition to and supplemental to all other provisions of other laws of Tennessee; provided, that wherever the application of

the provisions of this chapter conflict with the application of such other provisions, the provisions of this chapter shall prevail.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared severable.

SECTION 3. This act takes effect July 1, 2001, the public welfare requiring it; provided that this act shall apply to any transaction within its scope, even if the transaction was entered into or created before this act takes effect. Notwithstanding the foregoing, the application of the provisions of this chapter shall not affect the rights of holders of public obligations issued under the provisions of Tennessee Code Annotated, Title 9, Chapter 21, as amended, to the extent that their relative priorities were intended to be fixed by reference to any other provision of law prior to May 22, 1991.